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DATUK DOMAMI HUSSAIN & ORS

v.

HIKMAH BUMI ENGINEERING (SABAH) SDN BHD

B

HIGH COURT MALAYA, IPOH
CHE MOHD RUZIMA GHAZALI JC
[CIVIL SUIT NO: 22NCVC-149-09-2013]
3 APRIL 2014

C ***CIVIL PROCEDURE:*** *Jurisdiction - Forum conveniens - Defendant's place of business in Sabah - Whether characteristics of defendant and facts surrounding case fell within local jurisdiction - Whether High Court in Sabah and Sarawak convenient forum to determine dispute - Courts of Judicature Act 1964, s. 23(1)*

D ***CIVIL PROCEDURE:*** *Injunction - Interim injunction - Setting aside - Whether there were serious issues to be tried - Whether defendant would suffer greater injustice by grant of injunction - Whether damages irreparable and could not be compensated by costs - Whether damages an adequate remedy*

E

The first, second and third plaintiffs were individuals residing in Kuala Lumpur while the defendant was a company having a registered address in Sabah. The defendant was awarded a project by the Federal Government of Malaysia ('the project'). The F plaintiffs claimed that they had assisted the defendant during the negotiation of the project with the Federal Government and that in return, they were promised certain benefits by the defendant. The plaintiffs alleged that the defendant had failed to fulfil their promise and filed a writ of summons and statement of claim G seeking preventive relief and damages against the defendant. The plaintiffs applied and successfully obtained an order for the issue and service of a writ out of jurisdiction. The plaintiffs subsequently applied for an interim injunction and obtained a court order (*ex parte* order and *ad interim* order) to prohibit the defendant from H managing directly or through its agents any remaining monies in respect of the said project. The defendant was also restrained from taking, removing and managing its accounts at Malayan Banking Berhad in Sabah. The defendant subsequently applied to set aside the writ, the service of the writ, the interim injunction and for a I declaration that this court had no jurisdiction to hear the matter.

Held (allowing defendant's application):

(1) The characteristics of the defendant and the finding of facts fell squarely within the local jurisdiction of the High Court in Sabah and Sarawak. Section 23(1) of the Courts of Judicature Act 1964 provides that the High Court shall have jurisdiction to try all civil proceedings where the cause of action arose within the local jurisdiction, where the defendant had resided or had his place of business and where the facts on which the proceedings were based existed or were alleged to have occurred. Since the defendant had its place of business in Sabah, the High Court in Sabah and Sarawak was the proper or convenient forum to determine the dispute between the parties. It had the more real and substantial connection with the plaintiffs' claim in terms of subject matter *ie*, the said project, the facts of the case and the witnesses involved in the trial. (paras 26 & 30)

(2) The cause of action herein rested on the alleged fact that the defendant had purportedly made certain promises to the plaintiffs. The defendant was alleged to have breached the said promise. The defendant was a company and any decision must be made by way of a resolution. There was never any averment before the court on the resolution or decision at any level whatsoever made by the defendant and it had never been commented by the plaintiffs. Apart from that, the plaintiffs claimed that the defendant had committed deceit and fraud against them. The particulars of deceit and fraud had been pleaded but none of the particulars point out the deceit and fraud allegedly committed by the defendant. What was pleaded was only the breach of promises and rumours saying that the defendant would be wound up after receiving the final payment from the said project. Thus, there were no serious questions to be tried and the relief had to be refused. (paras 35, 37 & 38)

(3) This court had to weigh the harm that the injunction would produce by its grant against the harm that would result from its refusal. The plaintiffs were individuals claiming for a certain amount of money purportedly owed to them. The defendant was a company running a business with a multi million ringgit project in hand. The defendant needed all monies from the said project so that it could continuously pay its sub-contractors, employees, creditors or suppliers to avoid delay.

If the order was allowed to stay, it was highly likely that the defendant would not be able to complete the said project on time. The contract of the said project would be terminated and the defendant would be sued by the creditors and finally might be wound up. The defendant would suffer a greater injustice by the grant of the order since the damage was irreparable and could not be compensated by cost. An injunction would not be granted if damages were an adequate remedy. (paras 39 & 40)

Case(s) referred to:

American Cynamide v. Ethicon [1975] AC 396 ***(refd)***

American Express Bank Ltd v. Mohamad Toufic Al-Ozeir & Anor [1995] 1 CLJ 273 SC ***(refd)***

Bank Utama (Malaysia) Bhd v. Perkapalan Dai Zhun Sdn Bhd [2003] 1 CLJ 450 HC ***(refd)***

Dayasar Corp Sdn Bhd v. CP Ng & Co Sdn Bhd [1990] 1 CLJ 262; [1990] 2 CLJ (Rep) 11 HC ***(refd)***

Fung Beng Tiat v. Marid Construction Co [1997] 2 CLJ 1 FC ***(refd)***

IMPSA (Malaysia) Sdn Bhd v. Bank Muamalat Malaysia Bhd & Ors [2011] 1 LNS 729 HC ***(refd)***

Keet Gerald Francis Noel John v. Mohd Noor @ Harun Abdullah & 2 Ors [1995] 1 CLJ 293 CA ***(refd)***

Lian Keow Sdn Bhd & Anor v. Overseas Credit Finance (M) Bhd & Ors [1982] CLJ 350; [1982] CLJ (Rep) 182 FC ***(refd)***

London & Blackwall Railway Co v. Cross [1886] 31 Ch D 354 ***(refd)***

Malacca Securities Sdn Bhd v. Loke Yu [1998] 3 CLJ 22 HC ***(refd)***

Malaysian Assurance Alliance Bhd v. Comsa Properties Sdn Bhd [2013] 1 CLJ 69 CA ***(refd)***

Perbadanan Setiausaha Kerajaan Selangor & Ors v. Metroway Sdn Bhd & Anor & Another Appeal [2003] 3 CLJ 339 CA ***(refd)***

RHB Bank Bhd v. Kawood Sdn Bhd & Ors And Another Suit [2002] 2 CLJ 387 HC ***(refd)***

Siti Juliana Suen Abdullah v. Sungei Wang Properties Sdn Bhd & Ors [2005] 3 CLJ 870 CA ***(foll)***

Syarikat Nip Kui Cheong Timber Contractor v. Safety Life & General Insurance Co Sdn Bhd [1975] 1 LNS 173 HC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, ss. 3, 23(1)
Federal Constitution, art. 121(1)
Rules of Court 2012, O. 12 r. 10

For the plaintiffs - Gurbachan Singh Bagawan Singh; M/s Bachan & Kartar
For the defendant - Mohd Nor Mohamad; M/s Wong Chooi & Mohd Nor

Reported by Suhainah Wahiduddin

JUDGMENT

Che Mohd Ruzima Ghazali JC:

Introduction

[1] The first, second and third plaintiffs are individuals residing at No. 110, Jalan Anthinahapan, Taman Tun Dr Ismail, Kuala Lumpur, No. 4 Hala Tasek Timur 5, Kg Tersusun Tasek, Ipoh and No. 110, Jalan Anthinahapan, Taman Tun Dr Ismail, Kuala Lumpur respectively. The third plaintiff is the son of the first plaintiff.

[2] The defendant is a company registered under the Companies Act 1965 having registered address at Lot A-5-2, 5th floor Plaza Tanjung Aru, Kota Kinabalu, Sabah.

[3] The defendant was awarded a project known as 'Projek Cadangan Pelaksanaan Kerja-kerja Penyelengaraan Cerun Di Seluruh Sabah (Fasal 1 - Pengumpulan Data l Cerun)' by the Federal Government of Malaysia (the said project).

[4] The plaintiffs claimed that they had assisted the defendant during the negotiation of the project with the Federal Government and technically giving their hands in helping the defendant to start the said project. In return they were promised certain benefits by the defendant.

[5] The plaintiffs alleged that the defendant had failed to fulfil their promise. They filed a writ of summons and statement of claim seeking a preventing relief and claimed damages against the defendant. The plaintiffs applied and successfully obtained an order for the issue and service of a writ out of jurisdiction.

[6] The plaintiffs subsequently applied for an interim injunction and obtained a court order (*ex parte* order dated 23 September 2012 and *ad interim* order dated 3 October 2013) to prohibit the defendant from managing directly or through its agents any remaining monies in respect of the said project from Jabatan Kerja Raya. The defendant was also restrained from taking, removing and however managing her account at Malayan Banking Berhad located at Karamunsing, Sabah.

[7] The defendant has entered appearance without filing a statement of defence. The defendant subsequently applied to set aside the writ, the service of the writ, the interim injunction and for a declaration that this court has no jurisdiction to hear the matter and also for cost.

Plaintiffs' Claim

[8] The first plaintiff claimed that he was orally appointed as director and executive chairman of the defendant on or about April 2008 and officially appointed as director of the defendant on 16 January 2009. However, the defendant had declared to the Registrar of Companies that the first plaintiff's appointment only took effect from 23 May 2011 and there were 50,000 unit of shares allocated in favour of the first plaintiff in early 2009. Besides that, he was also promised a payment of RM150,000 a month from the date of the said project awarded to the defendant.

[9] The second plaintiff claimed that the defendant had instructed, appointed and permitted him to use all the connections he had in Jabatan Kerja Raya (JKR) and also in Kementerian Kewangan Malaysia (KKM) to secure the said project. In return, second plaintiff was promised RM2,000,000 from the payment of the first phase of the said project and another RM5,000,000 from the second phase of the same.

[10] The third plaintiff is the son of the first plaintiff who was appointed as the chief operating officer of the defendant's company and was promised a monthly salary of RM15,000 a month.

[11] Due to the efforts of the first, second and third plaintiffs, the said project was given to the defendant. Even though JKR had made payment to the defendant on 15 January 2012, none were made to the plaintiffs as promised.

[12] The defendant is said to be under control of an individual named Awang Damit bin Mohd Yusof (Awang Damit). He is also the majority shareholder and director of the defendant.

[13] Without the knowledge of the first plaintiff, Awang Damit appointed his sister-in-law as a director of the defendant on 18 January 2012. On the even date, the first plaintiff was still the director of the defendant.

[14] The plaintiffs alleged that the defendant had committed deceit and fraud and laid down the particulars of the said deceit and fraud in their amended statement of claim. The plaintiffs further claimed that they were informed by their friends that Awang Damit had intended to wind up the defendant after getting the final payment of the said project.

Defendant's Application

[15] The defendant filed an application under O. 12 r. 10 Rules of Court 2012 seeking an order from the court to:

(a) set aside/struck out the writ; and/or

(b) set aside the service of the writ; and/or

(c) set aside/struck out the *ex parte* order dated 23 September 2013; and/or

(d) set aside/struck out the *ad interim* order dated 3 October 2013; and/or

(e) declare that this court does not have jurisdiction in the matter herein and/or this court is an unsuitable forum (*forum non convenience*) for the cause of this case.

Findings And Decision

[16] The main issue to be considered is on local or territorial jurisdiction of the court. On this issue, it is trite that reference had to be made to the basic provision laid down in the Federal Constitution and the Courts of Judicature Act 1964. (see *Syarikat Nip Kui Cheong Timber Contractor v. Safety Life & General Insurance Co Sdn Bhd* [1975] 1 LNS 173; [1975] 2 MLJ 115; *Fung Beng Tiat v. Marid Construction Co* [1997] 2 CLJ 1; [1996] 2 MLJ 413; *Malacca Securities Sdn Bhd v. Loke Yu* [1998] 3 CLJ 22; [1999] 6 MLJ 112; *Malaysian Assurance Alliance Bhd v. Comsa Properties Sdn Bhd* [2013] 1 CLJ 69).

[17] Article 121(1) of the Federal Constitution read as follows:

> 121(1) There shall be two High Courts of co-ordinate jurisdiction and status, namely:
>
> (a) one in the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry at such place in the States of Malaya as the Yang di-Pertuan Agong may determine; and

A (b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine;

B (c) (Repealed),

and such inferior courts as may be provided by federal law; and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.

C **[18]** The definition of High Court and local jurisdiction is spelt out in s. 3 of the Courts of Judicature Act 1964:

'High Court' means the High Court in Malaya and the High Court in Sabah and Sarawak or either of them, as the case may
D require;

'local jurisdiction' means -

(a) in the case of the High Court in Malaya, the territory comprised in the States of Malaya, namely, Johore, Kedah,
E Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor, Terengganu and the Federal Territory of Kuala Lumpur; and

(b) in the case of the High Court in Sabah and Sarawak, the territory comprised in the States of Sabah, Sarawak and the
F Federal Territory of Labuan,

including, in either case, the territorial waters and the air space above those States and the territorial waters; to mean separately the two High Courts constituted by art. 121(1) of the Federal Constitution and the territorial area of their local jurisdiction.

G **[19]** Therefore the provision of art. 121(1) of the Federal Constitution establish two separate High Courts of coordinated jurisdiction - the High Court of Malaya with local jurisdiction covering the geographical area of West Malaya and the High
H Court of Sabah and Sarawak covering the territorial area of East Malaysia.

[20] Meanwhile s. 23 of the Courts of Judicature Act 1964 provides for the general civil jurisdiction of the High Court. For easy reference, the provision read as follows:

I

Civil jurisdiction - general

23 (1) Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where:

(a) the cause of action arose;

(b) the defendant or one of several defendants resides or has his place of business;

(c) the facts on which the proceedings are based exist or are alleged to have occurred; or

(d) any land the ownership of which is disputed is situated, within the local jurisdiction of the court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.

(2) Without prejudice to the generality of subsection (1), the High Court shall have such jurisdiction as was vested in it immediately prior to Malaysia Day and such other jurisdiction as may be vested in it by any written law in force within its local jurisdiction.

[21] Back to the plaintiffs' claim, it is not disputed that the defendant is a company with its registered and business address in Kota Kinabalu, Sabah and the said project was awarded to the defendant related to data collection and subsequent maintenance of slopes situated in Sabah.

[22] The plaintiffs' claim for damages can be summarised as follows:

First Plaintiff

(i) RM150,000 a month from February 2011 to 31 August 2013 amounting to RM4,650,000,00 and still continuing for every month until the completion of the said project;

(ii) A brand new Mercedes 320 S Class car; and

(iii) A bungalow in Kota Kinabalu, Sabah.

Second Plaintiff

(i) RM3,00,000 from the first phase of the said project and RM5,000,000 from second phase of the same and RM20,000 monthly allowance for the period of five years;

A (ii) A brand new Mercedes 320 S Class car; and

(iii) A bungalow in Kota Kinabalu, Sabah.

Third Plaintiff

B (i) A salary of RM15,000 a month from October 2010 amounting to RM540,000 and still continuing for every month; and

(ii) RM470,000.

C **[23]** It is obvious that the plaintiffs' claims are for the work done in the said project. The first and third plaintiffs are respectively the director and the employee of the defendant. Their monthly remuneration was supposed to be paid by the defendant from the defendant's bank account in Sabah. For the second plaintiff the
D amount promised was from the payment received by the defendant from JKR for the said project which is also credited to the defendant's bank account in Sabah.

[24] Meanwhile, the claims for the allocation of a bungalow
E house by the first and second plaintiff were in Kota Kinabalu, Sabah and it is safe to infer that the use of the brand new Mercedes 320 S Class car will be also in Sabah.

[25] Based on the promises and other action done by the
F defendant, the plaintiffs claimed that the defendant had committed deceit and fraud against them. Since the defendant's place of business is in Sabah, it is my view that the said deceit and fraud if had been committed by the defendant, must be at the place of business which is in Sabah.

G **[26]** To conclude, the characteristic of the defendant and the finding of facts discussed above falls squarely within the local jurisdiction of the High Court in Sabah and Sarawak. Section 23(1) para. (a), (b) and (c) of the Courts of Judicature Act
H provides that the High Court shall have jurisdiction to try all civil proceedings where the cause of action arose within the local jurisdiction, where the defendant had resided or has his place of business and where the facts on which the proceedings are based exist or are alleged to have occurred.

I **[27]** Looking one step ahead, if the plaintiffs succeed in their claim, the proper jurisdiction to enforce the judgment is also at the High Court of Sabah and Sarawak. It had been decided that the

proper court to hear and decide the winding up proceeding is where the company resides. (see *Dayasar Corp Sdn Bhd v. CP Ng & Co Sdn Bhd* [1990] 1 CLJ 262; [1990] 2 CLJ (Rep) 11; [1990] 1 MLJ 191).

[28] Next, on the question of *forum non conveniens* the plaintiffs argued that they reside in Kuala Lumpur but choose to file the action in Ipoh for the purpose of suitability. The plaintiffs are individuals and would be put to extensive cost, expenses and inconvenience in pursuing action in Sabah. In contrast, the defendant is a company which is financially strong and sound.

[29] The defendant referred and relied on the fact disposed in the affidavit in support of the application especially at paras 7, 8, 9 and 10. In short, the defendant averred that it has a registered and business address in Sabah. All staff reside and all business activities done in Sabah. The said project was supervised by Pengarah JKR Sabah and partly done by defendant's sub-contractors who reside in Sabah.

[30] Since the defendant have its place of business in Sabah which is within the local jurisdiction of the High Court in Sabah and Sarawak, it is my considered view that the High Court in Sabah and Sarawak would appear to be the proper or convenient forum to determine the dispute between the parties. It had the more real and substantial connection with the plaintiffs' claim in terms of the subject matter ie, the said project, the facts of the case and the witnesses involve in the trial. (The case of: *American Express Bank Ltd v. Mohamad Toufic Al-Ozeir & Anor* [1995] 1 CLJ 273; *RHB Bank Bhd v. Kawood Sdn Bhd & Ors And Another Suit* [2002] 2 CLJ 387; [2001] MLJU 690; *Bank Utama (Malaysia) Bhd v. Perkapalan Dai Zhun Sdn Bhd* [2003] 1 CLJ 450; [2003] 5 MLJ 40; *Siti Juliana Suen Abdullah v. Sungei Wang Properties Sdn Bhd & Ors* [2005] 3 CLJ 870; [2005] 6 MLJ 693; referred and followed).

[31] By agreeing with the defendant on the issue of jurisdiction, the issue of the interim order for an injunction automatically resolved. (In *IMPSA (Malaysia) Sdn Bhd v. Bank Muamalat Malaysia Bhd & Ors* [2011] 1 LNS 729 Hamid Sultan J (as he then was) made the following observation: "It is trite that an application for injunction is not a separate cause of action in itself, but merely an ancillary claim, unable to exist by itself. In order for a party to obtain an injunction from the court, the applicant must

A have a pre-existing cause of action against the defendants.") But since the issue was also raise in the defendant's application, I will address the issue accordingly.

[32] In the case of *American Cynamide v. Ethicon* [1975] AC 396, B the House of Lords set out the test to be satisfied by the court before granting an interlocutory injunction and stated that the court must:

(1) Satisfy itself on the evidence before it on the application that the Plaintiff has 'a real prospect' of succeeding in his claim C for a full injunction at the trial. If it does not, the injunction may not be granted.

(2) If it does so satisfy itself, the court should then go on to consider:

D (a) whether, if the plaintiff is successful at the full trial, he could be adequately compensated in damages for the loss he would have suffered by the defendant being allowed to continue to act unlawfully. If damages would be an adequate remedy and if the defendant could afford to pay E them, the injunction should not be granted.

(b) if damages would not adequately compensate the plaintiff, whether if the defendant is successful at the trial and an interlocutory injunction had been granted, he could be adequately compensated in damages for being restrained F from doing something which he was lawfully entitled to do, up till the date of the trial. If damages would, in this way, be an adequate remedy, and the plaintiff could afford to pay them, an injunction should be granted.

(3) where there is doubt as to the adequacy of damages as a G remedy to either or both parties, then the court should look at all the circumstances of the case and decide whether the 'balance of convenience' is in favour of granting an injunction.

(4) where the arguments based upon the balance of convenience H appear to be evenly balanced, the court should preserve the status quo i.e. if the injunction is to prevent the defendant from doing something he is already doing, it should be refused, whereas if it is to stop him starting a new activity it should be allowed.

I **[33]** The principle set out in *American Cynamide* had been referred and followed in numerous cases. However, in *Lian Keow Sdn Bhd & Anor v. Overseas Credit Finance (M) Bhd & Ors* [1982] CLJ

350; [1982] CLJ (Rep) 182; [1982] 2 MLJ 162 Salleh Abbas FJ (as he then was) laid down a simpler test in granting of an interlocutory injunction. He said:

> An interlocutory injunction is a temporary and discretionary remedy. To consider whether to grant it or to refuse it the Court is not concerned with the chances of success or failure of the appellants in proving their civil suit at the forthcoming trial, neither is the Court's function to evaluate the evidence and materials before it for that purpose. The Court is simply concerned with what it has to do in the meantime in order to protect the right of the parties so that no irreparable injury would be caused to either of them. Further whilst the Court is not concerned with such questions the Court must however, be satisfied that there are serious questions to be gone into in that suit, lest an application for an injunction should be made on frivolous and vexatious grounds. (*American Cynamide v. Ethicon Ltd.* [1975] AC 396).

[34] In *Keet Gerald Francis Noel John v. Mohd Noor @ Harun Abdullah & 2 Ors* [1995] 1 CLJ 293 Gopal Sri Ram JCA (as he then was) pointed out the steps to be taken when hearing an application for an interlocutory injunction. He summarise the steps as follows:

> ... a Judge hearing an application for interlocutory injunction should undertake an inquiry along the following lines:
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> > first, he must ask himself whether the totality of the facts presented before him discloses a *bona fide* serious issue to be tried. He must, when considering this question, bear in mind that the pleadings and evidence are incomplete at that stage. Above all, he must refrain from making any determination on the merits of the claim or any defence to it. It is sufficient if he identifies with precision the issues raised on the joinder and decides whether these are serious enough to merit a trial. If he finds, upon a consideration of all the relevant material before him, including submissions of Counsel, that no serious question is disclosed, that is an end of the matter and the relief is refused. On the other hand if he does find that there are serious questions to be tried, he should move on to the next step of his inquiry;
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> > second, having found that an issue has been disclosed that requires further investigation, he must consider where the justice of the case lies. In making his assessment, he must take into account all relevant matters, including the practical realities of the case before him. He must weigh the harm that the injunction would produce by its grant against the

harm that would result from its refusal. He is entitled to take into account, *inter alia*, the relative financial standing of the litigants before him. If after weighing all matters, he comes to the conclusion that the plaintiff would suffer greater injustice if relief is withheld, then he would be entitled to grant the injunction especially if he is satisfied that the plaintiff is in financial position to meet his undertaking in damages. Similarly, if he concludes that the defendant would suffer the greater injustice by the grant of an injunction, he would be entitled to refuse relief. Of course, cases may arise where the injustice to the plaintiff is so manifest that the Judge would be entitled to dispense with the usual undertaking as to damages (see: *Cheng Hang Guan v. Perumahan Farlim (Penang) Sdn. Bhd.* 1988] 1 CLJ 435 (Rep); [1988] 3 MLJ 90). Apart from such cases, the Judge is entitled to take into account the plaintiff's ability to meet his undertaking in damages should the suit fail, and, in appropriate cases, may require the plaintiff to secure his undertaking, for example, by providing a bank guarantee;

thirdly, the Judge must have in the forefront of his mind that the remedy that he is asked to administer is discretionary, intended to produce a just result for the period between the date of the application and the trial proper and intended to maintain the status quo, an expression explained by Lord Diplock in *Garden Cottage Foods Ltd. v. Milk Marketing Board* [1984] AC 130 and applied in *Cheng Hang Guan (supra)*. It is a judicial discretion capable of correction on appeal. Accordingly, the Judge would be entitled to take into account all discretionary considerations, such as delay in the making of the application or any adequate alternative remedy that would satisfy the plaintiff's equity, such as an award of monetary compensation in the event that he succeeds in establishing his claim at the trial. Any question going to the public interest may, and in appropriate cases should, be taken into account. A Judge should briefly set out in his judgment the several factors that weighed in his mind when arriving at his conclusion.

[35] With those principle in mind that I now return to the case at hand and examine the cause papers involved in the application for the interim injunction order. From the amended statement of claim, the cause of action herein rests on the alleged fact that the defendant had purportedly made a certain promise to the plaintiffs. The defendant has breached the said promise and had no

intention to fulfil the said promise. I agree with the defendant's submission that the defendant is a company and any decision made must be by way of a resolution. There has never been any averment before the court by the plaintiffs on the resolution or decision at any level whatsoever made by defendant and it has never been commented on by plaintiffs.

[36] The defendant also pointed out in their submission that all the monies including other benefits purportedly promised to be paid to the plaintiffs if counted for the period promised total at least RM16,800,000 against that the contract value of the said project which could not be more than RM28,000,000. Does the claim make sense?

[37] Apart from that, the plaintiffs claimed that the defendant had committed deceit and fraud against them. Perusing the pleading, particulars of deceit and fraud had been pleaded but none of the particulars point out the deceit and fraud committed by the defendant. What was pleaded only the breach of promises and the appointment of a new director by the defendant, beside rumours saying that the defendant will be wound up after receiving the final payment from the said project.

[38] I am totally aware that I must refrain myself from making any determination on the merits of the claim but I need to identify the issues raised and decide whether these are serious enough to merit a trial. Upon considering of all the relevant material before me, including submissions from parties, I found that there were no serious question to be tried and the relief has to be refused.

[39] Even if I decide otherwise, I still have to consider where the justice of the case lies. I must weigh the harm that the injunction would produce by its grant against the harm that would result from its refusal. Plaintiffs are individuals claiming for certain amount of money purportedly owed to them. In contrast, the defendant is a company running business with a multi-million ringgit project in hand. The defendant needs all monies from the said project so it could continuously pay its sub-contractors, employees, creditors or suppliers to avoid delay. If the order is allowed to stay it is highly likely the defendant would not be able to complete the said project on time. The contract of the said project will be terminated and defendant will be sued by the creditors and finally might be wound up. I conclude that the defendant would suffer a greater injustice by the grant of the order since the damage is irreparable and cannot be compensated by cost.

A **[40]** Finally, the plaintiffs' claim are only for certain amount of money. It is trite law that an injunction will not be granted if damages are an adequate remedy. (In *London & Blackwall Railway Co v. Cross* [1886] 31 Ch D 354 at 369 Lindley LJ said: "The very first principle of injunction law is that *prima facie* you do not
B obtain an injunction to restrain actionable rights in which damages are the proper remedy"; In *Perbadanan Setiausaha Kerajaan Selangor & Ors v. Metroway Sdn Bhd & Anor & Another Appeal* [2003] 3 CLJ 339, at p. 343, court of appeal speaking through Gopal Sri Ram JCA (as he then was) said: "Now, it is settled principle that
C specific relief is generally declined by a Court of Equity where monetary compensation is an adequate remedy."). It is crystal clear that the plaintiffs' claims are only for damages. Their only worry is the rumours from their own friends claiming that the defendant might be wound up. Contrary to the document
D exhibited by the plaintiffs themselves in their affidavit in support of the *ex parte* order that the said project was approved by KKM for the period of five years involving estimated cost of RM35 million and JKR has issued letter of intent dated 19 January 2011. It means that the said project will last until the year of 2016.
E Therefore the allegation is baseless. The defendant still has enough money to pay the plaintiffs if they succeed in their claim for damages. Besides that there were no other justification rendered.

[41] Based on the foregoing, it is my considered view that *ad*
F *interim* injunction order issued against the defendant should also be set aside even if I decide to dismiss the defendant's application for want of jurisdiction.

[42] For the reasons as adumbrated above, I allow the
G defendant's application for prayers 1 and 2 encl. 18 with costs of RM10,000 to the defendant.

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